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another. From a decree dismissing the bill, complainants appeal. Reversed and remanded, with directions.

McGuire, Riely & Bryan and *J. G. Jefferson, Jr.*, for appellants.

R. G. Southall, for appellees.

VIRGINIA BREWING CO. *v.* COMMONWEALTH.

Jan. 18, 1912.

[73 S. E. 454.]

Intoxicating Liquors (§ 96*)—Liquor Dealer's Tax—Recovery—Involuntary Payment.—Under Code 1904, § 567, which provides that any person aggrieved by an assessment of taxes may apply to the courts for redress, the tax must have been involuntarily paid under protest; and where, on the refusal of a brewing company's application for a license to establish a distributing house, with advice of the court that the license could not be issued without the payment of a wholesale malt liquor dealer's tax, and that the conduct of the business, without such a payment, would render the company and its agents liable to criminal prosecution, the company paid the tax without a seizure of its property, or the adjudging of a penalty against it, there was no such compulsion as is necessary to justify the recovery.

[Ed. Note.—For other cases, see *Intoxicating Liquors*, Cent. Dig. § 96.* 11 Va.-W. Va. Enc. Dig. 136, 137.]

Error to Corporation Court of Lynchburg.

Action by the Virginia Brewing Company against the Commonwealth. From a judgment dismissing the petition, plaintiff brings error. Affirmed.

Harper & Goodman, for plaintiff in error.

Attorney General, for the Commonwealth.

BOARD OF SUP'RS OF NORFOLK COUNTY et al. *v.* DUKE et al.

Jan. 18, 1912.

[73 S. E. 456.]

1. Statutes (§ 90*)—Constitutional Law (§ 61*)—Municipal Corporations (§ 12*)—Division of Governmental Power—Exercise of Legislative Power—Exercise by Judiciary—Incorporation of Town.—Const. 1902, § 5, and article 3 (Code 1904, pp. ccix, ccxvii), required the legislative, executive, and judicial departments to be separate; and section 117 (page ccxxxviii) provides that general laws for the organi-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.